

Remarks

Reconsideration of the application is requested in view of the above amendments and the following remarks. Claims 11-17 and 19 are canceled without prejudice or disclaimer. Claim 18 has been amended to include some of the limitations of claim 1. Claims 8-10 and 20 are allowed. New claim 21 has been added and includes limitations supported by claim 1, Figures 1, 3 and 7, and the description at page 8, line 28 to page 9, line 4 of the present application. Claims 1-10, 18, 20 and 21 are pending in the application.

I. Claim Rejections under 35 U.S.C. § 102

In section 2 of the Office Action, claims 11, 14, and 15 were rejected as being anticipated by Charmor (GB 2350420). Applicants respectfully traverse this rejection. Claims 11, 14 and 15 have been canceled without prejudice or disclaimer, rendering this rejection moot. Applicants do not concede the correctness of this rejection and reserve the right to pursue the subject matter of claims 11, 14 and 15 in a continuing application.

II. Claim Rejections under 35 U.S.C. § 103

In section 4 of the Office Action, claims 1-7, 12, 16, 18, and 19 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Charmor in view of Hess (U.S. 6,190,019) and Morton (U.S. 6,078,424). Applicants respectfully traverse this rejection.

Claims 12, 16 and 19 have been canceled, rendering this rejection moot as to those claims. Applicants do not concede the correctness of this rejection as it relates to claims 12, 16 and 19, and reserve the right to pursue the subject matter of those claims in a continuing application.

Charmor discloses a gas fired heating appliance that includes a simulated flame or visual effect provided behind a heat resistant screen 8 positioned at a rear of the combustion region of the fireplace. The simulated flame or visual effect may be provided by a ribbon or slit type device 9 that is movable via air flow from a blower 14, or a fabric tube, fibre optic, holographic, plasma discharge tube, or immiscible oil display device. All of the simulated flame or visual flame effect devices disclosed by Charmor are active devices that provide an image by either actively moving (e.g., moving device 9) or by generating an image in response to a signal (e.g., plasma discharge tube and holographic devices).

Charmor fails to disclose or suggest a lenticular screen that includes "a lenticular lens layer and an image layer disposed on the lenticular lens layer," as required by claims 1, 4, 6 and 18. Furthermore, Charmor fails to disclose or suggest the use of an image generating device that generates a simulated flame or visual flame effect without moving the device or requiring an image signal to generate the image with the device. Such a "passive" image generating device is not disclosed or suggested by Charmor.

A lenticular screen that includes a lenticular lens layer and an image layer disposed on the lenticular lens layer could be considered a "passive" image generating device because such a lenticular screen is capable of providing multiple distinct images (images disposed on the lenticular lens layer) for viewing by merely viewing the lenticular screen from different angles.

Hess discloses an apparatus for producing a visual effect of increased depth by reflecting an image onto a transparent panel. The apparatus includes a transparent panel 20 on which a visual pattern 32 is applied. The applied visual pattern 32 is imperceptible when looking through the panel 20, but is perceptible by positioning a reflective surface 22 behind the panel 20 that reflects the visual pattern 32 for viewing. The functionality of Hess is centered around reflection of an image from a reflective surface.

Hess fails to provide any disclosure or suggestion related to fireplaces, a simulated fire or flame effect, or a lenticular lens layer and an image layer disposed on the lenticular lens layer. Therefore, Hess fails to remedy the deficiencies of Charmor as it relates to claims 1, 4, 6 and 18.

Morton discloses an apparatus that includes a lenticular screen 10 that is positioned in front of a separate interchangeable image bearing member 14. Morton fails to disclose or suggest a fireplace, the use of a lenticular screen in a fireplace, how a lenticular screen may be implemented in a fireplace, or simulating a flame or fire image. Furthermore, the image bearing member 14 must be movable relative to the lenticular screen 10.

Applicants submit that there is no motivation to combine Charmor, Hess and Morton. As discussed above, Charmor fails to disclose or suggest the use of a lenticular screen in a fireplace or in conjunction with a simulated fire. Hess discloses an apparatus for producing a visual effect of increased depth by reflecting an image onto a transparent panel, but fails to provide any disclosure or suggestion of a fireplace, generating a simulated fire image, or any disclosure relating to lenticular devices or generating a visual effect of increased depth without using reflection. Although Morton discloses a lenticular screen, there is no disclosure or suggestion by

Charmor, Hess or Morton that it would be desirable to place such a lenticular screen in a fireplace to simulate a fire, or how such a combination could be accomplished; in particular, how the lenticular features of Morton could be integrated into the fireplace disclosed by Charmor, or how the lenticular features of Morton could be integrated into the apparatus disclosed by Hess and then integrated into the fireplace disclosed by Charmor. Thus, Applicants submit that one skilled in the art would not be motivated to combine the disclosures of Charmor, Hess or Morton.

The rejection provides the following as the stated motivation for combining Charmor, Hess and Morton.

It would have been obvious to one of ordinary skill in the art at the time of the invention to modify Charmor to include the use of an apparatus for producing a visual effect of increase depth in providing reflection of a image applied to a transparent panel in his advantageous fireplace as taught by Hess in order to an impression of increase size or depth of the bouble flame without modifying the size of the fire place. In addition, it would have been obvious to one of ordinary skill in the art at the time of the invention to modify Hess to include the use of a lenticular screen with a movable image layer by a motion imparting device behind the front panel of his advantageous apparatus for image display as taught by Morton in order to protect the protect the fire place screen from being damage by accidental impact on the screen by providing a stronger screen.

Pages 3-4 of the Office Action mailed on October 28, 2003. It is unclear why a motivation to "protect the lenticular screen and image layer assembly from being damaged", "providing reflection of a image applied to a transparent panel . . . in order to an impression of increase size or depth", and "modify[ing] Hess to include the use of a lenticular screen with a movable image layer by a motion imparting device behind the front panel" would provide motivation to combine Charmor, Hess and Morton, as these references do not suggest that these improvements would be desirable or feasible. For at least the reasons stated above, neither the references nor ordinary skill in the art provide the required motivation to combine the references as set forth in the rejection. Therefore, claims 1-7 and 18 are allowable over Charmor, Hess and Morton.

Further to the above, the screen 10 and image bearing member 14 disclosed by Morton are separate and distinct features that are movable relative to each other. The image bearing member 14 clearly is not "disposed on" the lenticular screen 10. Therefore, even in the event that the lenticular features of Morton could be combined with Hess and Charmor, which combination Applicants to not concede would be proper, the combination of these references fails to disclose or suggest a lenticular screen that includes "an image layer disposed on the

lenticular lens," as required by claims 1, 4, 6 and 18. Therefore, claims 1-7 and 18 are allowable for this additional reason.

III. New Claims

New claim 21 is directed to a fireplace that includes for simulating a natural fire that includes "a front panel defining a front surface of the fireplace" in addition to "a lenticular screen spaced apart from and viewable through the front panel". Applicants submit that the art of record, alone or in combination, fails to disclose or suggest a fireplace having such features. For example, Charmor fails to disclose a front panel that defines a front surface of the fireplace. The heat resistant panel 8 disclosed by Charmor is position behind the heat generating features of the fireplace and does not define a front surface of the fireplace. The Hess and Morton references discusses above fail to remedy this deficiency. Consideration and allowance of new claim 21 is respectfully requested.

IV. Conclusion

In view of the above, Applicants request reconsideration of the application in the form of a Notice of Allowance. The Examiner is encouraged to contact the undersigned attorney with any questions regarding this application.

Respectfully submitted,
MERCHANT & GOULD P.C.
P.O. Box 2903
Minneapolis, Minnesota 55402-0903
(612) 332-5300

Date: April 28, 2004

By: 

Joshua N. Randall
Reg. No.: 50,471
JNR:ac